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MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District	
Name of Movant <b>ALEJANDRO SANTIAGO</b>	Prisoner No. <b>16821-424</b>	Case No. <b>04-CR-245</b>	
Place of Confinement <b>FEDERAL CORRECTIONAL INSTITUTION P.O. BOX 6000 GILMER, WV 26351-6000</b>			
<b>UNITED STATES OF AMERICA</b>		V.	<b>ALEJANDRO SANTIAGO</b> (name under which convicted)
<b>MOTION</b>			
1. Name and location of court which entered the judgment of conviction under attack <b>UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION</b>			
2. Date of judgment of conviction <b>AUGUST 11, 2006</b>			
3. Length of sentence <b>360-months</b>			
4. Nature of offense involved (all counts) <b>POSSESSION OF CRACK COCAINE IN VIOLATION OF 21 U.S.C. §841(a)(1) and 18 U.S.C. §922(g)(1) and 21 U.S.C. §851 for PRIOR CONVICTIONS</b>			
<b>FILED</b>			
5. What was your plea? (Check one)			
(a) Not guilty <input type="checkbox"/>			
(b) Guilty <input checked="" type="checkbox"/>			
(c) Nolo contendere <input type="checkbox"/>			
MAR 10 2008 <i>new</i> <b>Mar 10, 2008</b> MICHAEL W. BORDENS CLERK, U.S. DISTRICT COURT			
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:			
<b>Petitioner had a plea agreement within the case. Only to two-counts within the indictment.</b>			
6. If you pleaded not guilty, what kind of trial did you have? (Check one)			
(a) Jury <input type="checkbox"/> N/A			
(b) Judge only <input type="checkbox"/>			
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
<b>08CV 1415 JUDGE GETTLEMAN MAGISTRATE JUDGE MASON</b>			

9. If you did appeal, answer the following:

(a) Name of court UNITED STATES COURT OF APPEALS SEVENTH CIRCUIT

(b) Result AFFIRMED

(c) Date of result \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes  No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court N/A

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes  No

(5) Result N/A

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Name of proceeding \_\_\_\_\_

(3) Grounds raised N/A

(3)

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes  No

(2) Second petition, etc. Yes  No

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(4)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.  
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.  
(g) Conviction obtained by a violation of the protection against double jeopardy.  
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.  
(i) Denial of effective assistance of counsel.  
(j) Denial of right of appeal.

A. Ground one: Ineffective Assistance of Counsel under the Sixth Amendment right to effective assistance of counsel and his Fifth Amendment

Supporting FACTS (state briefly without citing cases or law): rights to Due Process of law.

Counsel never once objected to the subject matter jurisdiction for knowingly and possessing ammunition affecting interstate commerce.

Accordingly, this prosecution prejudiced defendant's constitutional rights by charging defendant with section 922(g)(1).

B. Ground two: This Court would violate the Sixth Amendment by rebuttably presuming that the defendant's sentence within the guidelines range

Supporting FACTS (state briefly without citing cases or law): was reasonable. This Circuit and other circuits agrees that a sentencing court must now consider all factors—even factors prohibited by formerly mandatory guidelines in determining the type of sentence that satisfies the sentencing mandate of section 3553(a). The district court remains obligated to consult and correctly calculate the guidelines, after which it

C. Ground three: may impose a more lenient sentence as long as it is reasonable.

Supporting FACTS (state briefly without citing cases or law): N/A

D. Ground four: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): A retroactive amendment for reduction of sentence based on 2007 Guideline Amendment Nine which became effective on November 1, 2007, and caused a two-level reduction in defendant's base offense level for crack(cocaine base).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

N/A

\_\_\_\_\_

\_\_\_\_\_

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes  No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing \_\_\_\_\_ N/A

\_\_\_\_\_

(b) At arraignment and plea \_\_\_\_\_

\_\_\_\_\_

(c) At trial \_\_\_\_\_

\_\_\_\_\_

(d) At sentencing \_\_\_\_\_ N/A

\_\_\_\_\_

(6)

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(e) On appeal \_\_\_\_\_

\_\_\_\_\_

(f) In any post-conviction proceeding \_\_\_\_\_

\_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes  No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes  No

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes  No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

February 28th, 2008

Date

Alejandro Santiago  
\_\_\_\_\_  
Signature of Movant

